

on the record. As necessary and appropriate, the Commission may act accordingly to nullify the effect of the prohibited communication.

(d) This section shall not be construed to apply to requests for status reports or requests on other procedural matters.

[63 FR 37756, July 14, 1998, as amended at 64 FR 18324, Apr. 14, 1999]

PART 1371—PRODUCER REFERENDUM

Sec.

- 1371.1 Definitions.
- 1371.2 Purpose.
- 1371.3 Referendum procedure.
- 1371.4 Referendum agent.
- 1371.5 Confidentiality of ballots.
- 1371.6 Publication of referendum results.
- 1371.7 Ballots.
- 1371.8 Qualified cooperative block vote.

AUTHORITY: 7 U.S.C. 7256.

SOURCE: 63 FR 37758, July 14, 1998, unless otherwise noted.

§ 1371.1 Definitions.

As used in this part, and in addition to the terms defined herein, the terms defined in Article II, section 2 of the Compact and in 7 CFR part 1301 shall apply with equal force and effect.

Approved by producers means that at least two-thirds of the eligible producers who cast a vote approve the proposed order or amendment.

Cooperative block vote means a vote of approval or disapproval of a proposed order or amendment, cast in a producer referendum, by a qualified cooperative on behalf of its members or stockholders who are eligible producers.

Eligible producer means a producer who, during the representative period determined by the Commission, has been engaged in the production of milk, the price of which would be regulated under the proposed order or amendment.

Producer referendum means the balloting process by which the Commission determines whether a proposed order or amendment is approved by eligible producers.

Qualified cooperative means a cooperative association of producers, qualified under the provisions of the Act of Congress of February 18, 1922, as amended,

known as the Capper-Volstead Act, bona fide engaged in marketing milk, or in rendering services for or advancing the interests of producers of milk, but shall not include any cooperative which has been formed to act as a common marketing agency for both cooperatives and individual producers.

Representative period means that period of time designated by the Commission for the purpose of determining who is a producer eligible to participate in a producer referendum.

§ 1371.2 Purpose.

Prior to issuing, or amending, any regulation establishing a Compact over-order price regulation, including any provision with respect to milk supply, the Compact Commission shall conduct a producer referendum for the purpose of ascertaining whether the issuance or amendment of such regulation is approved by producers.

§ 1371.3 Referendum procedure.

The Commission shall certify the referendum procedure at the time it approves a final regulation. The referendum procedure shall include:

- (a) A designated representative period for determining eligible producers;
- (b) The date by which the ballots will be distributed to eligible producers and qualified cooperatives;
- (c) The date by which all qualified cooperatives must mail notices to eligible producer members as required by § 1371.9(b) and (c);
- (d) The date by which all ballots must be received at the Commission office;
- (e) A designated referendum agent; and
- (f) Any other procedures necessary for the conduct of the particular producer referendum.

§ 1371.4 Referendum agent.

The designated referendum agent shall:

- (a) Verify all ballots, cast individually or by block vote, with respect to timeliness, producer eligibility, cooperative identification, authenticity and other steps taken to avoid duplication of ballots.
- (b) Mark ballots determined to be invalid “disqualified” with a notation of

Northeast Dairy Compact Commission

§ 1371.8

the reason for disqualification. Disqualified ballots shall not be considered in determining approval or disapproval of the regulation.

(c) Compute and certify the following:

- (1) The total number of ballots cast;
- (2) The total number of ballots disqualified;
- (3) The total number of verified ballots cast in favor of the regulation or amendment;
- (4) The total number of verified ballots cast in opposition to the regulation or amendment;
- (5) Whether two-thirds of all verified ballots were cast in the affirmative.

(d) Report to the Executive Director of the Compact Commission the certified computations and results of the referendum under section (c); and

(e) At the completion of his or her work, seal all ballots, including the disqualified ballots, and submit a final report to the Executive Director stating all actions taken in connection with the referendum. The final report shall include all ballots cast and all other information furnished to or compiled by the Referendum Agent.

§ 1371.5 Confidentiality of ballots.

The ballots cast, the identity of any person or cooperative, or the manner in which any person or cooperative voted, and all information furnished to or compiled by the Referendum Agent shall be regarded as confidential.

§ 1371.6 Publication of referendum results.

The Executive Director shall publish the certified results of the referendum in the FEDERAL REGISTER.

§ 1371.7 Ballots.

(a) The Compact Commission shall prepare and ensure the prompt distribution of a ballot to all eligible producers consistent with the dates prescribed in the referendum procedure under § 1361.3.

(b) The ballot shall describe the terms and conditions of the referendum and be accompanied by an official copy of the proposed regulation or amendment. The ballot shall provide notice that a producer may register his or her approval or disapproval with the Com-

pact Commission either directly or through his or her cooperative. The ballot shall indicate that any qualified cooperative eligible to block vote must provide written notice to each eligible producer as to whether and how it intends to cast its vote. The notice shall also identify the final due date for the Commission's receipt of the completed ballot.

§ 1371.8 Qualified cooperative block vote.

(a) Qualified cooperatives may block vote on behalf of their eligible producer members in accordance with section 13(c) of the Compact. The Compact Commission shall ensure that each qualified cooperative is notified of its right to cast a block vote on behalf of eligible members in each producer referendum by the date prescribed pursuant to § 1371.3(b).

(b) A qualified cooperative shall, before casting its ballot in any referendum, give prior written notice to each of its eligible producers of how it intends to cast its vote. The notice and ballot shall be on the form provided by the Commission and shall be mailed by the cooperative to eligible producer members as prescribed in the producer referendum procedure pursuant to § 1371.3. The notice shall make express reference to the ballot documentation provided by the Compact Commission, and may include a copy of such documentation.

(c) Any qualified cooperative that does not intend to block vote shall give written notice to each of its members on a form approved by the Compact Commission. The notice shall be mailed by the cooperative to eligible producer members as prescribed in the producer referendum procedure pursuant to § 1371.3. The notice shall make express reference to the ballot documentation provided by the Compact Commission, and may include a copy of such documentation.

(d) Each qualified cooperative shall certify to the Compact Commission, on the form provided by the Commission, that it is qualified to block vote and that it has provided proper and timely notice of either the ballot cast or of the decision that the cooperative is not casting a block vote. The cooperative

shall mail a copy of the notice to the Commission no later than two days after mailing of notice to members. Cooperatives that are voting shall also submit the original executed ballot in a separate envelope marked "Referendum Ballot," or as otherwise provided in the referendum procedure pursuant to §1371.3.

(e) If the ballot submitted to the Commission by a qualified cooperative differs in any significant way from the notice of its ballot sent to member producers, then the Commission may take appropriate remedial action.

(f) A producer who is a member of a cooperative that has provided notice of its intent to cast a block vote to approve or not to approve a proposed order or not to cast a block vote and who by ballot expresses his approval or disapproval of the proposed order, shall notify the Compact Commission as to the name of the cooperative of which he or she is a member, and the Commission shall remove such producer's name from the list certified by such cooperative with its corporate vote. If the producer lists the name of a cooperative that is different from the cooperative identified by the ballot number, as determined by the representative period for the referendum, the latter will control.

PART 1381—RULES OF PRACTICE GOVERNING PROCEEDINGS ON PETITIONS TO MODIFY OR TO BE EXEMPTED FROM COMPACT OVER-ORDER PRICE REGULATIONS

Sec.

- 1381.1 Definitions.
- 1381.2 Institution of proceedings.
- 1381.3 Contents of petition.
- 1381.4 Conduct of proceedings.
- 1381.5 Judicial appeal; escrow.

AUTHORITY: U.S.C. 7256.

SOURCE: 62 FR 35065, June 30, 1997, unless otherwise noted.

§ 1381.1 Definitions.

As used in this part, the terms defined in Article II, section 2 of the Compact shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) *Administrative assessment* shall include the assessment imposed upon Handlers under 7 CFR 1308.1 for their pro rata share of the expense of administering a Compact pricing regulation, as announced each month by the Federal Order #1 Market Administrator and authorized under 7 U.S.C. 7256.

(b) *Chair* shall mean the Chair of the Northeast Dairy Compact Commission.

(c) *Handler* shall mean any person subject to a Compact Over-order price regulation or administrative assessment, or to whom a Compact Over-order price or administrative assessment is sought to be made applicable.

(d) *Compact Over-order price regulation* shall mean the prices regulated under the provisions of 7 CFR parts 1300, 1301, 1303-1307, as announced each month by the Federal Order #1 Market Administrator and authorized under 7 U.S.C. 7256.

(e) *Order* shall include a Compact Over-order price regulation.

§ 1381.2 Institution of proceedings.

Any handler desiring to complain that any order, Compact over-order price, or administrative assessment, or any provision of such order or assessment, or any obligation imposed in connection therewith is not in accordance with law shall file with the Commission a petition in writing, along with 5 copies of the same.

§ 1381.3 Contents of petition.

A petition shall contain:

(a) The correct name, address, and principal place of business of the petitioner. If petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions, held by its officers; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner.

(b) Reference to the specific terms or provisions of the regulation, order, or notice of administrative assessment, or the interpretation or application thereof, which are complained of.

(c) A full statement of the facts (avoiding a mere repetition of detailed